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In The  
**Supreme Court of the United States**

STACEY STANTON; MICHAEL FRIAS; BRIAN LANG;  
JOHN SPEARMAN; TERRY CONNOR; WILLIAM A.  
ORDWAY; and LELA STEFFEY, Members of the  
Arizona License Plate Commission,

*Petitioners,*

vs.

ARIZONA LIFE COALITION; GARY PAISLEY,

*Respondents.*

**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Did the Ninth Circuit err in holding – in conflict with the Sixth Circuit – that specialty license plates constitute private speech, not government speech, and that the First Amendment therefore gave the Respondents the right to require Arizona to issue a license plate with a message that Arizona does not wish to convey?

## **PARTIES TO THE PROCEEDING**

The Respondents are the Plaintiffs-Appellants: the Arizona Life Coalition and its Chairman, Gary Paisley. This Petition will refer to them collectively as "Life Coalition."

The Petitioners are the current members of the Arizona License Plate Commission: Stacey Stanton (Chair); Lela Steffey; William A. Ordway; Richard Fimbres; Roger Vanderpool; Margie Emmerman; and Dora Schriro. This Petition will refer to them collectively as "the Commission." (Fimbres, Vanderpool, Emmerman, and Schriro were not Defendants below, having replaced other members on the Commission after the Complaint was filed. The named Defendants who have been replaced and are no longer members are Michael Frias, Brian Lang, John Spearman, and Terry Connor.)

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**OPINIONS BELOW**

The decision of the Ninth Circuit Court of Appeals is reported: *Arizona Life Coalition, Inc. v. Stanton*, 515 F.3d 956 (9th Cir. 2008). It is included as Appendix A.

The decision of the district court is unreported: *Arizona Life Coalition, Inc. v. Stanton*, 2005 WL 2412811, No. CV-31691-Phx-PGR (D. Ariz. Sep. 26, 2005). It is included as Appendix B.

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**STATEMENT OF JURISDICTION**

The United States Court of Appeals for the Ninth Circuit issued its panel decision on January 28, 2008. No rehearing was sought or ordered. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The Respondents – Plaintiffs below – filed suit under 42 U.S.C. § 1983, alleging violations of their federal constitutional rights. The United States District Court for the District of Arizona had jurisdiction under 28 U.S.C. § 1341 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”).



## **CONSTITUTIONAL AND STATUTORY PROVISIONS**

The First Amendment to the United States Constitution is set forth in Appendix C.

Arizona Revised Statutes Annotated (A.R.S.) §§ 28-2404 and 28-2405 are also set forth in Appendix C.

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### **STATEMENT OF THE CASE**

The members of the Arizona License Plate Commission ask this Court to grant certiorari to settle a dispute among the federal courts about whether the States' specialty license plates constitute government speech. They seek review of the court of appeals' decision holding that the Commission violated the Respondents' free-speech rights by denying their application for a specialty Arizona license plate bearing their logo and their motto, "Choose Life." The Ninth Circuit held that the requested license plate constituted private speech, not government speech, and therefore that the First Amendment's Free Speech Clause was implicated. It went on to hold that the Commission violated the Respondents' free-speech rights in denying the requested plate.

#### **A. Material Facts.**

Arizona Life Coalition is an Arizona non-profit corporation whose membership includes both organizational and individual members; Gary Paisley is its

chairman. (Dkt. 35 at 2, ¶¶ 1, 2.) Life Coalition sued the members of the Arizona License Plate Commission, alleging that they violated its civil rights by failing to authorize the issuance of a special organization plate conveying the Coalition's message "Choose Life." (Dkt. 1; Dkt. 14 [Amended Complaint].)

### **1. Statutory Process for Special Organization License Plate Applications.**

The process to request a special organization license plate is provided in A.R.S. §§ 28-2404 and -2405. (App. C.) Qualifying organizations may apply for special organization license plates by following the statutory procedure. A.R.S. § 28-2404(A). The Arizona Department of Transportation determines whether the applicant meets the statute's requirements. *Id.* The Commission determines whether to authorize a special organization plate. A.R.S. § 28-2404(B). The Commission is composed primarily of the directors (or their designees) of Arizona state agencies: the Department of Public Safety; the Department of Transportation; the Office of Tourism; and the Department of Corrections. A.R.S. § 28-2405(A).

Under A.R.S. § 28-2405(D), the Commission is to determine, *inter alia*, the color and design of license plates and whether the special organization plates meet the following requirements of A.R.S. § 28-2404(B):

1. The primary activity or interest of the organization serves the community, contributes to the welfare of others and is not

offensive or discriminatory in its purpose, nature, activity or name.

2. The name of the organization or any part of the organization's purpose does not promote any specific product or brand name that is provided for sale.

3. The purpose of the organization does not promote a specific religion, faith or anti-religious belief.

## **2. Life Coalition's Applications.**

Life Coalition applied for a special organization plate displaying its logo – a graphic of two children's faces – and the motto, "Choose Life." (Dkt. 35 at 8, ¶ 22.) The Department of Transportation determined that Life Coalition was a qualified organization under A.R.S. § 28-2404(G)(2) and submitted its request to the Commission. (*Id.*, ¶ 23.)

The Commission first considered Life Coalition's application at its meeting on August 28, 2002. (*Id.* at 11, ¶ 32.) At that meeting, Commission members expressed concerns about the plate design, which did not have the required name of the organization. (*Id.*, ¶ 33.) Members also discussed whether a "Choose Life" plate would be perceived as being endorsed by the State of Arizona. (*Id.*, ¶ 36.) Several Commission members expressed reservations about Life Coalition's application. (*Id.*, ¶ 38.) Commissioners Steffey and Gutier were concerned that if the Commission approved a license plate with "Choose Life," then

groups with differing viewpoints might also apply for a license plate with the opposite position. (*Id.*) The Commission did not approve or disapprove Life Coalition's request at the meeting; it tabled the application pending receipt of additional information and legal advice. (*Id.* at 12, ¶ 39.)

Life Coalition later submitted a revised application. (*Id.*, ¶ 40.) The only material difference in this new application was that it included Life Coalition's name in the plate design. (*Id.*, ¶ 41.)

The Commission met and considered Life Coalition's renewed application. (*Id.* at 13, ¶ 44.) Paisley told the Commissioners that Life Coalition had added its name to the logo in response to the comments from the earlier meeting. (*Id.* at 15, ¶ 54.) After hearing from Paisley and after some further discussion, the Commission formally denied Life Coalition's request. (*Id.* at 17-18, ¶¶ 70-84.)

## **B. Course of Proceedings.**

Life Coalition filed suit in the United States District Court for the District of Arizona against the Commission and its individual members, seeking injunctive and monetary relief. (Dkt. 1; Dkt. 14 [Amended Complaint].) (The parties later stipulated to dismiss the monetary claims. [Dkt. 22.]) Life Coalition alleged that the Commission violated its First Amendment and equal-protection rights by denying its application. (Dkt. 14.) The parties filed

Cross Motions for Summary Judgment based on agreed facts. (Dkt. 34, 35, 39, 45.)

The district court denied Life Coalition's Motion and granted the Commission's. (Dkt. 54 [App. B].) Applying the four-factors test that courts have developed, it held that Life Coalition's license plate would constitute government speech if it were issued. (App. B at 5b-13b.) It determined first that the overall purpose of the specialty license-plate program "serves primarily a government function." (*Id.* at 9b.) It then found that the Commission "exercises enough substantive control" to "make[] the speech government speech rather than private speech." (*Id.* at 11b.) Finally, it concluded that both Life Coalition and Arizona would be the literal speaker on the license plate but "the ultimate responsibility remains with Arizona, which controls the type of organization allowed and the substance that the organization tries to promote." (*Id.* at 13b.)

It also held that the plate constituted a nonpublic forum and that the Commission's decision to deny Life Coalition's application was reasonable. (*Id.* at 13b-17b.) It rejected Life Coalition's equal-protection argument. (*Id.* at 21b-22b.)

Applying the same four factors as the district court, the Ninth Circuit reversed. *Ariz. Life Coalition v. Stanton*, 515 F.3d 956 (9th Cir. 2008) (App. A). Conceding that it was a close question, the court held that the license plate would constitute private – not government – speech, and thus would implicate Life

Coalition's free-speech rights. *Id.* at 968 (App. A at 14a-21a).

Acknowledging that “the primary purpose of any vehicle license plate is vehicle identification and registration” (*id.* at 15a), the court nonetheless concluded that the specialty license-plate program serves a private, rather than a government function (*id.* at 16a). It pointed to secondary purposes of the program: allowing philanthropic organizations to spread their message “in the hopes of raising money to support their cause.” (*Id.*) The court next found that the Commission lacked editorial control over the messages conveyed on specialty plates. (*Id.* at 17a-18a.) And although it conceded that Arizona owns its license plates and that both the State and the car owner could be viewed as the literal speaker, the court found that the owner was the speaker because of the “logo depicting the faces of two young children will also be displayed on the license plate supporting the message ‘Choose Life.’” (*Id.* at 20a.) Finally, the court concluded that Life Coalition, not the Commission, would bear the ultimate responsibility for the plate because Life Coalition suggested the content. (*Id.* at 20a-21a.)

The court therefore held that Life Coalition's requested plate constituted private, not government, speech. (*Id.* at 21a.) In so doing, it acknowledged that in *American Civil Liberties Union of Tennessee v. Bredesen*, 441 F.3d 370 (6th Cir.), *cert. denied*, 126 S. Ct. 2972 (2006), the Sixth Circuit had reached the

opposite conclusion “on nearly identical facts.” (App. A at 11a.)

The court went on to conclude that the Commission had violated Life Coalition’s free-speech rights; it therefore reversed and remanded to the district court. (*Id.* at 34a.)<sup>1</sup>

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### REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to resolve the conflict among the circuits concerning whether specialty license plates constitute government speech or private speech. In concluding that the message on Arizona’s specialty license plates is private speech, the Ninth Circuit ruled consistently with *Sons of Confederate Veterans, Inc. v. Commissioner of Virginia Department of Motor Vehicles*, 288 F.3d 610, 619-22, *reh’g en banc denied*, 305 F.3d 241 (4th Cir. 2002), but in direct conflict with the Sixth Circuit in *Bredesen*, 441 F.3d at 375 (message on the face of Tennessee specialty license plates is government speech). Concluding that a message on specialty

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<sup>1</sup> The court also held that the Tax Injunction Act did not deprive the federal courts of jurisdiction over Life Coalition’s challenge. (App. A at 71.) In this, it agreed with the Sixth Circuit in *Bredesen*, 441 F.3d at 373, and disagreed with the Fifth Circuit’s contrary holding in *Henderson v. Stalder*, 407 F.3d 351, 354-60 (5th Cir. 2005), *cert. denied sub nom., Keeler v. Stalder*, 126 S. Ct. 2967, No. 05-1222 (June 26, 2006). The Petitioners do not seek certiorari on this issue.

license plates is private speech ignores the fact that their quintessential purpose and nature is governmental – to identify automobiles and their owners and to show compliance with state registration laws – and that the very reason that organizations want their message on license plates is to receive the State’s apparent endorsement of their message.

This Court’s guidance is necessary to clarify the government-speech doctrine. The Court has recently granted certiorari in *Pleasant Grove City v. Summum*, No. 07-665, cert. granted (U.S. March 31, 2008). Like the Ninth Circuit here, the Tenth Circuit in *Summum* misapplied the government-speech doctrine in concluding that the First Amendment required the city to display a privately donated monument on city property. *Summum v. Pleasant Gove City*, 483 F.3d 1044, 1057, reh’g & reh’g en banc denied, 499 F.3d 1047 (10th Cir. 2007). These courts have unreasonably interpreted the First Amendment to limit the ability of government to determine what messages it will communicate.

Finally, certiorari is warranted because of the practical consequences of the circuit split. States in the Sixth Circuit may choose the message that they wish to promote and are assured that their citizens will not be confused by the mandatory display of messages that these States do not support. But States in the Ninth and Fourth Circuits are compelled to allow messages on their license plates that they do not support.



### **I. Federal Courts Have Reached Conflicting Decisions on Whether Specialty License Plates Constitute Government Speech.**

The lower courts have reached inconsistent results on whether specialty license plates involve government speech. As one judge put it even before the Ninth Circuit issued its opinion here: “[A]t least three circuits (4th, 5th, and 6th) will have spoken on the issue, reaching at least three different conclusions, via at least sixteen separate opinions.” *Bredesen*, 441 F.3d at 380 n.1 (Martin, J., concurring in part, dissenting in part). The Ninth Circuit opinion only exacerbates the conflict, and thus this Court’s guidance is necessary.

The Ninth Circuit disagreed with the district court to hold that specialty license plates constitute private speech. *Ariz. Life Coalition*, 515 F.3d at 968 (App. A at 21a). It agreed with *Sons of Confederate Veterans*, 288 F.3d at 621, where a panel of the Fourth Circuit affirmed the district court, holding that specialty license plates constitute private speech. See also *Women’s Emergency Network v. Bush*, 323 F.3d 937, 945 n.9 (11th Cir. 2003) (dictum: “We fail to divine sufficient government attachment to the messages on Florida specialty license plates to permit a determination that the messages represent government speech.”). But the Ninth Circuit’s decision conflicts with *Bredesen*, 441 F.3d at 375, where the Sixth Circuit reversed the district court and held that a specialty license plate constitutes government speech. Taking yet a different approach, a different

panel of the Fourth Circuit, affirming the district court, concluded that specialty license plates are neither purely government speech nor private speech. *Planned Parenthood of S.C., Inc. v. Rose*, 361 F.3d 786, 793 (lead opinion of Michael, J.); *id.* at 800 (Luttig, J., concurring); *id.* at 801 (Gregory, J., concurring), *reh'g & reh'g en banc denied*, 373 F.3d 580 (4th Cir. 2004).

To determine whether public or private speech is involved, the lower courts have developed the so-called four-factor test, which the Ninth Circuit applied here. *Ariz. Life Coalition*, 515 F.3d at 964 (App. A at 12a); *see Rose*, 361 F.3d at 794; *Sons of Confederate Veterans*, 288 F.3d at 618; *Summum v. City of Ogden*, 297 F.3d 995, 1004 (10th Cir. 2002); *but see Bredesen*, 441 F.3d at 375, 380 (rejecting the four-factors test in favor of factors listed in *Johanns v. Livestock Marketing Ass'n*, 544 U.S. 550 (2005)).

The test examines these four factors:

(1) the central “purpose” of the program in which the speech in question occurs; (2) the degree of “editorial control” exercised by the government or private entities over the content of the speech; (3) the identity of the “literal speaker”; and (4) whether the government or the private entity bears the “ultimate responsibility” for the content of the speech, in analyzing circumstances where both government and a private entity are claimed to be speaking.

*Ariz. Life Coalition*, 515 F.3d at 964 (App. A at 12a) (quoting *Sons of Confederate Veterans*, 288 F.3d at 618-19). The factors are supposed to be non-exclusive and non-exhaustive, and not all factors are necessarily applicable in each case. *Id.*; *Rose*, 361 F.3d at 794; *Sons of Confederate Veterans*, 288 F.3d at 618-19.

Because the four-factor test has not produced consistent results when applied to specialty license plates, this Court should grant certiorari to give the lower courts guidance on the appropriate test for determining when the government has the right to control its message on license plates.<sup>2</sup>

## **II. The Lower Courts Need This Court's Guidance on the Government-Speech Doctrine.**

The Court should grant certiorari to clarify the proper scope and application of the government-speech doctrine to determine whether the States may, consistent with the First Amendment, decline to issue

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<sup>2</sup> This issue is real and concrete. There are more cases working their way through the courts that raise First Amendment concerns in the denial of plate applications, whether for specialty plates or vanity plates. They include at least the following: *Byrne v. Rutledge*, No. 07-4375, Second Circuit; *Roach v. Vincent*, No. 08-1429, Eighth Circuit; *Choose Life Ill. v. White*, No. 07-1349, Seventh Circuit; *Children First Foundation, Inc. v. Legreide*, No. CIV.A. 04-2137 (MLC), District of New Jersey; and *Children First Foundation, Inc. v. Martinez*, Civ. No. 1:04-CV-0927 (NPM/RFT), Northern District of New York.

specialty license plates containing messages that they do not wish to communicate.

When a State speaks, it “may take legitimate and appropriate steps to ensure that its message is neither garbled nor distorted.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995). “[I]t may make content-based choices.” *Id.* “The First Amendment does not prohibit the government itself from speaking, nor require the government to speak. Similarly, the First Amendment does not preclude the government from exercising editorial discretion over its own medium of expression.” *Muir v. Ala. Educ. Television Comm’n*, 688 F.2d 1033, 1044 (5th Cir. 1982) (en banc). When the speech involved is government speech, the government has not created a forum for public speech and First Amendment free-speech protections do not apply. *Knights of the Ku Klux Klan v. Curators of the Univ. of Mo.*, 203 F.3d 1085, 1093-94 (8th Cir. 2000).

The lower courts’ four-factors test for differentiating between private and government speech has led to inconsistent results. And the Ninth Circuit’s attempt to tie its use of the four-factors test to this Court’s analysis of the government-speech doctrine in *Johanns v. Livestock Marketing Ass’n*, 544 U.S. 550 (2005), is inappropriate. The Ninth Circuit stated that *Johanns* applied a test similar to the four-factors test. *Ariz. Life Coalition*, 515 F.3d at 965 (App. A at 14a) (citing *Johanns*, 544 U.S. at 560-61). *Johanns* analyzed whether a U.S. Department of Agriculture program requiring beef producers to

finance promotional messages (“Beef: It’s What’s for Dinner”) to support their industry violated their free-speech rights. *Johanns*, 544 U.S. at 554. The Court rejected that claim, concluding that the program constituted government speech. *Id.* at 561-62. It listed various facts showing the ties between the USDA and the ads, *id.* at 560-62. But it did not purport to establish them as a test of general application.

The differences between specialty license plates and beef-industry ads counsel against applying the same test to both. Watching the beef ads, the typical television viewer would not have known that the Cattlemen’s Beef Promotion and Research Board – which produced the ads, *Johanns*, 544 U.S. at 553 – was affiliated with the government. Certainly, the typical viewer had no way of knowing that “the government set[] the overall message to be communicated and approve[d] every word that [wa]s disseminated.” *Ariz. Life Coalition*, 515 F.3d at 963 (App. A at 11a) (quoting *Johanns*, 544 U.S. at 561-62). The beef ads looked like any other commercial that a company or a trade group might have aired. Tacit, behind-the-scenes factors were all that connected the government to the ads in *Johanns*.

License plates stand in stark contrast; they are quintessentially governmental. They are clearly, unequivocally, and indelibly connected with the States that issue them, both by their essential nature and because the States’ names are boldly featured on them. Consequently, their communicative connection

with the government does not depend on the factors that this Court noted in *Johanns*. And nothing in that opinion intimates that those factors – or any like them – are the sine qua non for government speech in different situations.

Courts attempting to differentiate between private and government speech in other contexts have reached questionable results. The Tenth Circuit believes that private monuments donated to and owned by governments, which the governments display on public property, constitute private speech. *Summum*, 483 F.3d at 1047. This Court granted the city's petition for certiorari on these questions:

1. Did the Tenth Circuit err by holding, in conflict with the Second, Third, Seventh, Eighth, and D.C. Circuits, that a monument donated to a municipality and thereafter owned, controlled, and displayed by the municipality is not government speech but rather remains the private speech of the monument's donor?

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3. Did the Tenth Circuit err by ruling that the city must immediately erect and display *Summum*'s "Seven Aphorisms" monument in the city's park?

*Pleasant Grove City v. Summum*, No. 07-665, Questions Presented (<http://www.supremecourtus.gov/qp/07-00665qp.pdf>, last visited April 11, 2008). In granting certiorari, this Court has recognized that the

lower courts need guidance on the government-speech issues presented. Similarly, the Court should grant certiorari here to give guidance on how the government-speech doctrine applies to specialty license plates.

### **III. The Ninth Circuit Erred in Concluding That Arizona's Specialty License Plates Constitute Private Speech.**

The Ninth Circuit agreed that States should be allowed to control the message that they convey or are perceived as conveying: "We recognize that Arizona has a legitimate interest in regulating controversial material displayed publicly on government property." *Ariz. Life Coalition*, 515 F.3d at 973 (App. A at 34a). But it failed to give the State that legitimate control. Its failure to do so is directly related to its application of the four-factors test, which led it to conclude that the specialty license plate constitutes private speech. That conclusion skews the balance unreasonably against the government when elements of both government and private speech are present.

The four-factors test seems at least partially responsible for the Ninth Circuit's failure to perceive that the message on a license plate is inevitably and irretrievably associated with the government that issued the plate. Everybody knows that license plates are issued by the States. Every State has its name prominently displayed on its plates. Life Coalition's proposed plate is no exception: other than the Life

Coalition's logo and motto, the plate is identical to the standard Arizona license plate. (App. D.) The word "ARIZONA" is emblazoned across the top. (*Id.*) Persons seeing that plate could not help but conclude that the State of Arizona is urging them to choose life and thus is advocating for one side of the abortion debate. The Ninth Circuit's failure to recognize that fact shows that the four-factors test is ill-suited to specialty license plates.

Applying two of the four factors, the Ninth Circuit found it important that Life Coalition provided the text of the message for its requested plate and that the Arizona statutes did not explicitly give the Commission the power to reject the message. *Ariz. Life Coalition*, 515 F.3d at 966, 967-68 (App. A at 17a, 20a-21a). The problem with this is that these factors have little, if any, effect on the message that the license plate conveys to the typical viewer. These behind-the-scenes factors might have more relevance in the public-monument setting, where the government can erect a disclaimer stating that it does not endorse the message. *See Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 776 (1995) (O'Connor, J., concurring) (acknowledging possibility of government disclaimer of religious symbol displayed on capitol grounds); *id.* at 784 (Souter, J., concurring) (same); *see also* Helen Norton, *Not for Attribution: Government's Interest in Protecting the Integrity of Its Own Expression*, 37 U.C. Davis Law Rev. 1317, 1339 (2004) (possibility of a governmental disclaimer should be a factor in determining whether



First Amendment protections apply). But disclaimers on license plates are impracticable, if not impossible.

The Ninth Circuit recognized that there was no evidence that Arizona intended to adopt the “Choose Life” message. *Ariz. Life Coalition*, 515 F.3d at 968 (App. A at 21a). But it turned that fact on its head, using it as a factor to conclude that that the plate constituted private speech, not government speech. *Id.* In so doing, it ignored the message that the proposed plate will actually communicate. That the State of Arizona does not necessarily endorse the “Choose Life” message is not conveyed to those who view the license plate. If the plate is issued, viewers will inevitably perceive that Arizona is advocating one side in the abortion debate.

Indeed, it cannot reasonably be doubted that this perception is precisely why Life Coalition is fighting so hard for this Arizona plate. As one judge has observed:

The reason why an individual wants a vanity license plate is that the license plate bears the imprimatur of the state. Petitioner wants the state’s endorsement of his message. Petitioner could put any bumper sticker on his vehicle that he desires. . . . However, . . . a bumper sticker would not satisfy petitioner’s desire to have the state endorse the words he chooses to display.

*Higgins v. Driver & Motor Vehicle Servs. Branch*, 13 P.3d 531, 541 n.4 (Or. App. 2000) (en banc) (Wollheim,

J., concurring), *aff'd*, 72 P.3d 628 (Or. 2003). Whether or not the State actually shares the private speaker's sentiments, the medium involved – a state-issued license plate – conveys the message that the State does agree. States have a legitimate interest in ensuring that their own messages are clear and a corresponding interest in not being associated with messages that they do not wish to convey. The Ninth Circuit failed to sufficiently acknowledge this, a failing directly tied to its misapplication of the four-factors test.

One commentator has noted that specialty license plates blend government speech and private speech, arguing that in hybrid situations one party may not force the other to broadcast a message that the latter does not wish to be associated with. *Not for Attribution*, 37 U.C. Davis Law Rev. 1317. Governments have a legitimate interest in not having a private party's message associated with them. *Id.* at 1323-24 (citing *Wooley v. Maynard*, 430 U.S. 705, 717 (1977); *Planned Parenthood of S. Nev., Inc. v. Clark County Sch. Dist.*, 941 F.2d 817, 827 (9th Cir. 1991)). The Fourth Circuit has recognized that specialty license plates are a hybrid of government and private speech. *Rose*, 361 F.3d at 793, 800, 801.

The hybrid approach is consistent with this Court's sentiments in *Wooley*, which held that a State may not constitutionally force car owners to "use their private property as a 'mobile billboard' for the State's ideological message" on the State's license plate. 430 U.S. at 714-15. The Ninth Circuit cited

*Wooley* in support of its conclusion that the license plate constitutes private speech. *Ariz. Life Coalition*, 515 F.3d at 966-67 (App. A at 18a-19a). But it misconstrued *Wooley*: this Court later clarified that the mobile billboard was the car, not the license plate. *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n*, 475 U.S. 1, 17 (1986). Just as governments cannot force individuals to spread a governmental message, the First Amendment should not give individuals the power to force the government to unwillingly spread individuals' messages. See *Not for Attribution*, 37 U.C. Davis Law Rev. at 1324 ("Government's negative expressive interests can be described as the flip side of the proposition that the First Amendment prohibits a government from compelling an individual to utter – or otherwise display or publicly associate with – a viewpoint with which he or she disagrees."). "[C]ourts have recognized that government may similarly have significant 'negative' interests in 'avoid[ing] becoming the courier' for views that are not its own." *Id.* (quoting *Wooley*, 430 U.S. at 717; citing *Planned Parenthood v. Clark County Sch. Dist.*, 941 F.2d at 827 [school district properly excluded organization's advertisements from high school newspapers and other publications; school had an interest in "disassociating itself from speech inconsistent with its educational mission and avoiding the appearance of endorsing views, no matter who the speaker is"]).

At its core, the Free Speech Clause is aimed at prohibiting the government from silencing the citizens, preventing them from voicing their opinions.

*E.g., United States v. Eichman*, 496 U.S. 310, 316-17 (1990) (Flag Protection Act unconstitutionally infringed on free-speech rights of persons wishing to convey a message by burning the national flag). That did not happen here. Life Coalition had – and has – many ways to convey its message in the exact same time and place as a specialty license plate would have provided it. The only real difference is that a message on the license plate would have the imprimatur of the State of Arizona, and that only happens because the State’s license plate communicates that imprimatur.

The Ninth Circuit’s decision results in an extraordinary transformation of the First Amendment. It is no longer just a shield, protecting citizens against governmental efforts to stifle their messages. It is now a sword, giving citizens the power to force an unwilling government to convey their messages. The Court should grant certiorari to determine whether the First Amendment goes that far.

#### **IV. The Court Should At Least Hold This Petition Pending the Outcome of *Pleasant Grove City v. Summum*.**

The opinion that will come from *Pleasant Grove City v. Summum* could potentially resolve the most important issues of this case. It might therefore be appropriate to simply grant certiorari here and remand the Ninth Circuit to reconsider its opinion in light of the *Pleasant Grove City* opinion. Consequently, the Court should, at the very least, hold this

case until the opinion in *Pleasant Grove City* is issued.

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**CONCLUSION**

The Court should grant this Petition for Certiorari.

Respectfully submitted,

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